

ESTTA Tracking number: **ESTTA670506**

Filing date: **05/04/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91220765
Party	Plaintiff FD9 Group, Inc.
Correspondence Address	MICHAEL N COHEN COHEN IP LAW GROUP PC 9025 WILSHIRE BLVD STE 301 BEVERLY HILLS, CA 90211 UNITED STATES mcohen@cohenip.com
Submission	Answer to Counterclaim
Filer's Name	Michael N. Cohen
Filer's e-mail	mcohen@cohenip.com
Signature	/Michael N. Cohen/
Date	05/04/2015
Attachments	FD9 Answer to Counterclaims.pdf(212882 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

FD9 GROUP, INC.

Opposer,

v.

BANGLE JANGLE, LLC

Applicant,

Proceeding No. 91220765

ANSWER TO COUNTERCLAIM

Opposer FD9 Group, Inc. (“Opposer” or “FD9”) hereby answers Applicant, Bangle Jangle, LLC (“Applicant” or “Bangle”) counterclaim as follows:

1. FD9 denies each and every allegation contained in paragraph 1.
2. FD9 lacks the requisite knowledge to admit or deny the allegation contained in paragraph 2 relating to Bangle’s unit number, and on that basis deny each and every allegation contained herein.
3. FD9 lacks the requisite knowledge to admit or deny the allegation contained in paragraph 3, and on that basis deny each and every allegation contained herein.
4. FD9 lacks the requisite knowledge to admit or deny the allegation contained in paragraph 4, and on that basis deny each and every allegation contained herein.
5. FD9 denies the allegation in paragraph 5.
6. FD9 lacks the requisite knowledge to admit or deny the allegations contained in paragraph 6, and on that basis deny each and every allegation contained herein.
7. FD9 denies the allegations contained in paragraph 7.
8. FD9 admits it sent a cease and desist letter, but denies each and every other allegation in paragraph 8.

9. FD9 lacks the requisite knowledge to admit or deny the allegations contained in paragraph 9, and on that basis deny each and every allegation contained herein.

10. FD9 lacks the requisite knowledge to admit or deny the allegations contained in paragraph 10, and on that basis deny each and every allegation contained herein.

11. FD9 lacks the requisite knowledge to admit or deny the allegations contained in paragraph 11, and on that basis deny each and every allegation contained herein.

12. FD9 admits the allegations in paragraph 12.

13. FD9 admits the allegations in paragraph 13.

14. FD9 admits the allegations in paragraph 14.

15. FD9 admits the allegations in paragraph 15.

16. FD9 denies the allegations in paragraph 16.

17. FD9 denies the allegations in paragraph 17.

18. FD9 denies the allegations in paragraph 18.

19. FD9 denies the allegations in paragraph 19.

20. FD9 denies the allegations in paragraph 20.

21. FD9 denies the allegations in paragraph 21.

AFFIRMATIVE DEFENSES

The following affirmative defenses are asserted by FD9.

FIRST AFFIRMATIVE DEFENSE

(Unclean Hands)

1. Each of Bangle's claims are barred by the doctrine of unclean hands.

SECOND AFFIRMATIVE DEFENSE

(Waiver)

2. Each of Bangle's claims is barred by the doctrine of waiver.

//

THIRD AFFIRMATIVE DEFENSE

(Estoppel)

3. Each of Bangle's claims is barred by the doctrine of estoppel.

FOURTH AFFIRMATIVE DEFENSE

(Unjust Enrichment)

4. Bangle is not entitled to any relief because its claims for relief would unjustly enrich Bangle at the expense of FD9.

FIFTH AFFIRMATIVE DEFENSE

(Priority of Use)

5. FD9's use of "COORDINATES" marks predates Bangle's marks, establishing priority of use.

SIXTH AFFIRMATIVE DEFENSE

(No Valid, Enforceable or Registered Trademark)

6. Bangle is not entitled to any relief because their alleged trademarks are invalid, unenforceable and/or unregistered.

SEVENTH AFFIRMATIVE DEFENSE

(Abandonment of Trademarks)

7. Bangle's counterclaim is barred, in whole or in part, by abandonment of the alleged trademarks on which it relies as the basis for the counterclaim.

EIGHTH AFFIRMATIVE DEFENSE

(Invalid Trademarks)

8. Bangle's counterclaim is barred because its purported trademarks are invalid and should not be registered; and Bangle cannot claim common law trademark rights because Bangle is the infringing junior user of FD9's marks.

NINTH AFFIRMATIVE DEFENSE

(Consent or Acquiescence)

9. Bangle's counterclaim is barred, in whole or in part, by their consent or acquiescence of FD9's use of its registered marks.

TENTH AFFIRMATIVE DEFENSE

(Trademark Misuse)

10. Bangle is not entitled to cancel FD9's registered marks because Bangle has engaged in trademark misuse by redirecting potential FD9 customers towards themselves.

ELEVENTH AFFIRMATIVE DEFENSE

(Good Faith)

11. Bangle is not entitled to any relief because FD9's conduct was in reasonable, in good faith, and/or innocent.

TWELFTH AFFIRMATIVE DEFENSE

(Right to Assert Additional Affirmative Defenses)

12. FD9 reserves the rights to assert additional affirmative defenses in the event that discovery and/or further investigation of Bangle's claims indicates that additional affirmative defenses are available to FD9.

WHEREFORE, FD9 Group, Inc. prays that:

- A. The United States Trademark Trial and Appeal Board denies Bangle Jangle LLC's request to cancel FD9 Group, Inc.'s Registration Nos.: 4,680,090, 4,541,700, 4,482,636, 4,668,121, 4,668,122, 4668,123 and 4,675,909
- B. Bangle Jangle LLC's Counterclaim be dismissed with prejudice;

Dated: May 4, 2015

Michael N. Cohen,
Joshua H. Eichenstein, of
COHEN IP LAW GROUP, P.C.

By: /s/Michael N. Cohen/
Michael N. Cohen
Attorneys for Opposer and Counterdefendant FD9
GROUP, INC

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing Answer to Counterclaim has been served on counsel for Counterclaimant, Bangle Jangle LLC, by mailing said copy on May 4, 2015, via First Class Mail, postage prepaid to:

Caroline H. Mankey
801 S. Figueroa St. 19th Floor
Los Angeles, CA 90017

Dated: May 4, 2015

/s/ Michael N. Cohen
Michael N. Cohen

Filed with the TTAB via ESTTA on May 4, 2015